

Town of Newington, NH

ZONING BOARD OF ADJUSTMENT

Meeting Minutes, September 17, 2020

- Call to Order:** Chair Matt Morton called the September 17, 2020 meeting at 5: 10 p.m. that was held on the Town Hall lawn under a tent.
- Present:** Chair Matt Morton, Vice-Chair Ralph Estes; Board members: John Frink; Meredith Hoyt; Edna Mosher; Alternate member, Will Gilbert; Town Planner, John Krebs and Jane Kendall, Recorder
- Absent:** Alternate member, Kathy Latchaw
- Public Guests:** Mark Phillips with Rollins Farm Holding, LLC; Wendy Sweeney; Christian and Meghan Waays; Attorney Kevin Baum; Jack McTigue with TFMoran; Steve Leonard Owners Construction representative; Denis Hebert

Public Hearings:

- 1) Request by **Rollins Farm Holding, LLC** for a variance from Article III, Section 2 and Article VII to allow retail sales in the Office Zone, and to allow a building 30 feet from the property line where 50 feet is required on property located at **66 Road Tax Map 13, Lot 5A.**

Mark Phillips with Rollins Farm Holding, LLC appeared before the Board on behalf of Jerry Worchester who was requesting a variance to allow retail sales of lobster and shrimp, and a variance to allow a portion of the 2,200 square foot building to be 30 feet from the property line.

Vice-Chair Estes asked if they were expanding the building, and Town Planner, John Krebs replied that they were removing one part of the building before rebuilding a new addition.

Board member, Edna Mosher asked if they could make the addition smaller to meet the setback. Mr. Phillips replied that they needed a certain amount of space for tanks to maintain 85 degrees for shrimp cultivation and 45 degrees for the lobsters.

Mr. Krebs asked if they could pull the building forward toward River Road. Mr. Phillips replied that they could, but then the building would go into the parking area.

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Ms. Mosher said she thought the operation was going to involve wholesale shipments, and asked if they would be advertising retail sales, and what kind of traffic it would generate. Mr. Phillips replied that Mr. Worchester lived in Newington, and had been losing business because of the COVID-19 pandemic so he wanted to include retail sales three or four days a week, but he 80-90% of the business would be wholesale overnight FEDX shipments.

Ms. Mosher asked if they would cook any of the seafood that would add odor. Mr. Phillips replied that there was no provision for cooking.

Ms. Mosher asked if the operation itself would emit any odor. Mr. Phillips replied that Mr. Worchester would install new stainless-steel equipment, the seafood would be under salt water, and the product packaged so there would be no refuse. Mr. Phillips added that Newington Wastewater Treatment Operations Manager, Dennis Messier also weighed in to be sure nothing bad would be going into the system.

Ms. Mosher asked if the building would have a sign advertising the business, and Mr. Phillips said the building blocks would be painted grey, and any signage would have to go through Planning Board site review.

Board member, John Frink asked Planning Board Chair, Denis Hebert if multiple uses were prohibited in one building, and Mr. Hebert replied that the Ordinance only allowed one principal building per lot, but that more than one business could operate in a building.

Chair Morton asked if the shrimp sales would be used for bait, and Mr. Phillips replied that he didn't know.

Mr. Krebs stated that Mr. Worchester appeared before the Planning Board for a Change of Use Permit for wholesale seafood sales, and it was then discovered that he wanted retail sales. He said the Planning Board had a history of protecting the Industrial Zone from retail sales, and his concern was that retail seafood sales could create a lot of traffic, but if approved, the Zoning Board of Adjustment (ZBA) could stipulate that only raw sales would be allowed.

Mr. Phillips said Custom Pools went into business on Shattuck Way in 1968, and Rockingham Electric opened in 1969, as well as Seacoast Fire Extinguishers went in, and there was not a lot of traffic.

Mr. Phillips added that fishermen were in Newington before farmers, and he didn't think the Board would have a problem with farm sales, so he didn't think seafood as any different. Mr. Phillips suggested that the Board could make a condition that sales could only be what he pulled out of the ocean and his tanks. Chair Morton added that it couldn't include fish sales either.

Mr. Phillips stated that the value of surrounding properties would not be diminished because there was a vacant lot to one side, commercial properties in the surrounding area, and the only residential abutter was Jennifer Sabine on the other side of the former Asia and Shogun restaurant site.

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Vice-Chair Estes asked how many parking spaces they would have, and Mr. Phillips replied that there would be around 12 spaces.

Mr. Krebs asked how he would unload totes from his boat in Seabrook, and Mr. Phillips said he probably would have a refrigerated truck.

Mr. Hebert said laws were changed about allowing retail use in the Industrial Zone, and asked if there would be enough square footage in the lot to use the rest of the lot for industrial use. Mr. Phillips replied that the lot was large enough to subdivide.

Mr. Hebert asked if it would try to create a substandard lot. Mr. Phillips replied that there were a lot of wetlands, and that could be reason for a hardship. He said someone had talked about another medical building, but nothing was certain at this point.

Chair Morton said he thought that former Selectmen John Rowe had established the Commercial District, and restricted retail use in the industrial corridor.

Mr. Frink expressed concern that granting this variance would open up more requests for retail use in the Industrial Zone. Chair Morton responded that the request was only for this unit, but noted that Rockingham Electric and Stoneface Brewing also had retail use in the Industrial Zone. Mr. Krebs responded that in the case of Stoneface Brewing, there was a statute in New Hampshire that allowed the sale of food with beer. Mr. Hebert added that Stoneface's retail use was an accident because Stoneface sent in a license request to the State, which returned it to Portsmouth zip code 03801 instead of Newington, so there was no opportunity for Newington to deny the request. Chair Hebert added that Rockingham Electric's retail use was grandfathered from the 1980's, but there had been a subsequent law case against retail use in the Industrial Waterfront Zone since.

Chair Hebert said the Planning Board was willing to accept wholesale, but they were concerned with retail use in the Industrial Zone, and were also concerned that a small retail operation could hang up the industrial or commercial office use for the rest of the lot. Mr. Phillips suggested that they could declare this an accessory use, but Mr. Hebert replied that an accessory building was only allowed in relation to a primary use.

Mr. Phillips reiterated that he could not predict what offers he might get for the other lot, and that was a separate issue from his request for a variance on this site. Chair Morton agreed that another proposal might not present itself for years, and that the Zoning Board was tasked at considering this proposal.

Edna Mosher moved to grant the request by Rollins Farm Holding, LLC for a variance from Article III, Section 2 and Article VII to allow retail sales in the Office Zone, and to allow a building 30 feet from the property line where 50 feet is required on property located at 66 Road Tax Map 13, Lot 5A as presented with the condition that only the shrimp and lobster produced by Jerry Worchester would be sold, and that no cooking of seafood on site would occur. John Frink seconded the motion.

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Ms. Mosher reviewed the five criteria, noting that granting the request would not be contrary to the public interest as it would improve the existing building, and would bring in more tax revenue.

Ms. Mosher stated that the spirit of the Ordinance would be observed, and substantial justice would be done by granting the request as it would create a commercial opportunity benefiting the property owner.

Ms. Mosher stated that the value of surrounding properties would not be diminished because the property would be enhanced,

Ms. Mosher concluded that literal enforcement of the Ordinance would result in an unnecessary hardship for the property and business owner.

The motion passed 4-1 with Matt Morton, Ralph Estes; Edna Mosher, and Meredith Hoyt voting in favor, and John Frink opposing.

- 2) Request by **Wendy Sweeney Revocable Trust** for a variance from Article VII, Section to allow a garage addition to be built 5.84 feet from the side lot line where 15 feet is required on property located at **28 Fox Point Road, Tax Map 18, Lot 11**.

Chris Waays, son-in-law of Dave and Wendy Sweeney appeared before the Board with his wife, Meghan Waays, and Wendy Sweeney to request a variance from the setback so that they could put another bay on the existing garage, and avoid the wetlands, and crossing the recently installed leach field.

Mr. Krebs asked if they had considered moving the addition to the back to stay out of the setback, and Mr. Waays replied that there was a patio there, and the garage would be double deep rather than wider, requiring vehicles to be moved in and out.

Mr. Krebs noted that there was room behind house that would keep them out of the side setback. Mr. Waays replied that he hadn't explored it.

Chair Morton pointed out that they would need a new garage. Mr. Waays said their intent was to add on to the existing garage, and placing a new garage to the back corner would cause them to lose five windows on the side of the house, and block their bulkhead that was between the garage and the house. Mr. Waays added that utilities ran under the existing garage.

Chair Morton asked if they could expand in front of the garage, and Mr. Waays said that would require a variance from the front setback, just as it would if they put the garage in front of the house.

Ms. Mosher stated that her biggest problem was that their request was placing their garage five feet from Keith and Sarah Frizzell's trees. Ms. Mosher asked if had letter from Mr. Waays said he had informed them, put stakes out, and gave them opportunities to address the placement if they had any issues.

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Meghan Waays stated that they had a good relationship with the Frizzells, and the Frizzells had expressed support for the renovations they had done to the house. Ms. Mosher agreed that they did a good job, but she didn't see the justification for a setback that close that could create problems with neighbors in the future when a new garage could be placed behind the existing garage without a variance. Mr. Waays replied that he couldn't see tearing down a structurally sound garage, a \$15,000 patio, and removing trees. Ms. Mosher responded that she would rather grant a wetlands variance, than a setback so close to the abutter's property line.

Ralph Estes moved to grant the request by Wendy Sweeney Revocable Trust for a variance from Article VII, Section to allow a garage addition to be built 5.84 feet from the side lot line where 15 feet is required on property located at 28 Fox Point Road, Tax Map 18, Lot 11 req for variance, and John Frink seconded the motion.

Discussion by the Board ensued with Ms. Mosher commenting that she understood the applicant's challenges, and that the proposal might not be a problem for anyone now, but was concerned that allowing a structure so close to the abutting property could create a problem for the future property owners.

Chair Morton asked what the hardship would be in building the garage toward the back, and Mr. Waays replied that there was an abandoned septic system in the back. Mr. Krebs pointed out that there was no setback either.

Vice-Chair Estes responded that the proposal seemed to be the best money-saving solution without requiring the building of a new garage, and removal of their patio. Vice-Chair Estes added that it wasn't up to the Board to redesign a proposal based on what might happen either.

Ms. Mosher said she thought it inappropriate to build that close to the trees and property line in the back, and it was up to the applicant whether they wanted to move the addition, or tear down the existing garage and build a new one at the back.

Chair Morton stated that he didn't think the proposal was contrary to the spirit of the Ordinance, but Ms. Mosher responded that she thought it was contrary to the abutters interest. Vice-Chair Estes said the abutters were notified, but did not appear before the Board to express any objections.

Ms. Mosher stated that she understood that substantial justice would be done by granting the applicant's request, however.

Chair Morton said the dwelling of the nearest abutter was set back, and he did not think that the value of surrounding properties would be diminished by granting the request.

Ms. Mosher responded the Frizzells could subdivide their 35 acres in the future, and allowing a structure that close to property line could affect the value of the abutting lot.

Mr. Frink commented that that the pond on the other side of the Frizzell's driveway would preclude them from putting in a 50 foot right-of-way between the driveway and

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the wetlands as required for a Town approved road for a 35-acre subdivision, so he didn't think that the applicant's request for a setback on the other side of the driveway would have any visual effect because nothing else could be built on the pond.

Chair Morton noted that there was an added expense if the request was denied, but they could still build the garage in the back without a variance. Ms. Mosher agreed that there was a reasonable alternative. Mr. Waays responded that building in the back would require extending the driveway, and Eversource's 50-foot right-of-way on both sides would restrict putting a patio or pool in the back if the garage was placed there.

The motion passed 4-1 with Matt Morton, Ralph Estes; John Frink; and Meredith Hoyt voting in favor, and Edna Mosher opposing.

3) Request by **Newington Falls, LLC** for a variance from Article IV, Section 8-A to allow a freestanding sign 9.5 feet within the front setback foot setback where 75 feet is required on property located at **Shattuck Way and River Road, Tax Map , Lot 6A**.

The applicant's legal representative, Attorney Kevin Baum appeared before the Board with Jack McTigue, P.E. with TFMoran, and Steve Leonard, representative with Owners Construction.

Attorney Baum stated that in May 2020 a variance was granted for the parking lot setback requirement, Attorney Baum said they also received site plan approval from the Planning Board, and realized that they needed a freestanding sign.

Vice-Chair Estes asked why they hadn't asked for a variance for the freestanding signage when they appeared before the ZBA the first time. Attorney Baum replied that he didn't recall, but he thought it was a reasonable request considering that there were other free standing signs on Shattuck Way; and the primary use of the building was an eye surgery unit, so it was important to have a freestanding sign identifying the tenants, rather than a sign on the building that would detract from the architecture.

Attorney Baum stated that they were proposing a 5 foot by 4-foot sign with internal illumination, which, aside from the setback.

Attorney Baum added that this was the first medical office on Shattuck Way, and having a freestanding sign would be more helpful in locating the site, than the listing on the sign at the end of the ramp off Route 16S.

Mr. Frink agreed that the font size on the Town's wayfinding sign at the end of the ramp on Route 16 South was too small to see, and it made sense to place a sign on the site to assist patients and vendors with finding their destination. Mr. Frink said he thought that a 75-foot setback for a sign was too far back, and few businesses on Shattuck Way conformed. Ms. Mosher agreed.

Chair Morton asked if there would be any signs on the building, and Attorney Baum said there would not be any signs on the building if the variance was approved.

Mr. Frink asked if anyone could see the sign with the landscaping. Attorney Baum said they were concerned that the sign on the building wouldn't be visible with

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landscaping, and the landscape architect said the trees wouldn't block a freestanding sign. Attorney Baum added that they might put the sign to the side more if it is determined that there is more traffic coming from the north side.

Mr. Hebert noted that there were lighting regulations for sign illumination, and they needed to be sure that it would not be flashing, and the intensity wouldn't be blinding to oncoming traffic at night. Attorney Baum responded that they fully intended to meet the site plan regulations, and they were only before the ZBA to request relief from the setback requirements.

Mr. Hebert said LED lights were a new technology, and they could be blinding if they were pointed in the wrong direction, so he suggested that it be a condition of approval to return to the Planning Board if there were any problems. Mr. Krebs said the condition would be fine, but they would also need a building permit for the sign. Attorney Baum responded that the sign would be illuminated internally, and would not be directional, but he had no issue with the condition.

Ms. Mosher asked if the sign had to be illuminated. Mr. Krebs pointed out that the sign would need to be illuminated when it got dark at 4:30 p.m. in the winter. Mr. Frink suggested that they could use a spotlight. Attorney Baum said the purpose of the sign was for wayfinding, and not advertisements, so they could consider shutting the illumination off at night.

Vice-Chair Estes stated that he was concerned that there were too many signs on Shattuck Way.

Edna Mosher moved to grant the request by Newington Falls, LLC for a variance from Article IV, Section 8-A to allow a freestanding sign 9.5 feet within the front setback foot setback where 75 feet is required on property located at Shattuck Way and River Road, Tax Map , Lot 6A, and Meredith Hoyt seconded the motion.

Mr. Frink stated that granting the request would not be contrary to the public interest because it was better to assist people in finding their destination than have them lost.

Mr. Frink said that the spirit of the Ordinance was about safety and also getting people to their destination. Mr. Frink added that substantial justice would be done because the applicant needed the sign to have their business noticed.

Mr. Frink stated that the value of surrounding properties would not be diminished because the sign would enhance the business, and surrounding businesses also had signs.

Mr. Frink said the hardship would be that a sign would not be visible in the 75-foot setback from the road.

The motion passed 4-1 with Matt Morton, Ralph Estes; John Frink; and Meredith Hoyt in favor, and Ralph Estes opposing.

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4) Other Business

Mr. Krebs informed the Board that the variance request for the cider mill had been rescheduled for the fourth or fifth time on Thursday, October 15, 2020, and that the meeting would need to be held inside.

Chair Morton commented that some people might not attend inside due to fears of the COVID-19 virus, and Board members agreed.

Mr. Krebs said tables would be set apart on the stage for Board members, and members of the public could wait outside in their vehicles if there were a large number, and come inside in small numbers to insure social distancing. Mr. Krebs said he could send an inquiry out to Board members on the Monday before the meeting to be sure they had a quorum.

Minutes: *Edna Mosher moved to approve the Minutes for the August 18, 2019 meeting with corrections as noted. Ralph Estes seconded, and all were in favor.*

Adjournment: The meeting adjourned at 6:49 p.m.

Next Meeting: Thursday, October 15, 2020 at 6 p.m.

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary

These Minutes were approved and adopted at the November 19, 2020 Zoning Board of Adjustment meeting.